

That entry, as it stands, purports to be an admission of the receipt by Samuel C. Hepburn of £260, as a payment from the Mollisons, in part of a pre-existing debt due from them. It makes \*not the slightest allusion to any contingency upon which it was to be considered as a payment or not; it does not intimate, that it was the proceeds of the sale of a bill of exchange, or anything else, which might or might not be deemed a payment, according to circumstances; but simply affirms the fact of a payment of the specified amount having been made on that day by the debtors to their creditor, and nothing more. It is by no means sufficient, as has been contended, to correct the mere date of the entry, in order to reconcile it with the bill; the whole sense of its language must also be so changed to convey the idea, that it was not merely a payment, but the receipt of the proceeds of the sale of the bill of exchange for the benefit of the testator's estate, which might eventually be a payment, or by which the estate might be involved in much loss. Nothing of the kind is, however, intimated. To sustain the petitioner on this ground, it is necessary that this entry in its date, sense, and substance should be altered, contradicted, and falsified. **104**

If the petitioner were competent thus to impeach his own evidence, the mistake or untruth should be shewn in the clearest and most satisfactory manner; but here he has offered, for that purpose, nothing more than inferences and plausible conjectures deduced from dates, sameness of amount, and the circumstance, that so many different items of the account could not have belonged to the same date.

As to the improbability of the payment in the year 1779; because of the interruption of all intercourse between this country and England by the war, it will be sufficient to remark, supposing the fact to have been so, that the Mollisons had a very large amount of debts and property in this State, and that at least two of their former agents remained here during the whole war, one of whom there is reason to believe; from the transactions in relation to the special Acts of Assembly of 1782, was certainly faithful and as active as he could be during the time and in the peculiar circumstances.

There is, however, nothing which shews that Samuel C. Hepburn, the drawer of the bill of exchange, seriously intended it should be considered as a transaction properly and exclusively belonging to the estate of his testator. The bill itself indicates on what fund it was drawn; but nothing more; and there can be no doubt, that the executor intended thus to collect a part of the assets of his testator. But if he had meant it should be considered as \*altogether an affair of his testator's estate, he would certainly have so expressed himself; and it was his duty, most distinctly to set forth that intention, if the facts were **105**